

BEFORE THE DIVISION OF MEDICAL QUALITY

BOARD OF MEDICAL QUALITY ASSURANCE

DEPARTMENT OF CONSUMER AFFAIRS

STATE OF CALIFORNIA

In the Matter of the Petition to
Revoke Probation of:

ROBERT ANTHONY MICHALS, M.D.
121 North San Vicente Blvd.
Beverly Hills, CA 90211

License No. G-8384,

Respondent.

NO. D-2769

L-24714


DECISION

The attached Proposed Decision of the Administrative Law
Judge is hereby adopted by the Division of Medical Quality
Assurance
Board of Medical Quality/ as its Decision in the
above-entitled matter.

This Decision shall become effective on May 19, 1982.

IT IS SO ORDERED April 19, 1982.

DIVISION OF MEDICAL QUALITY
BOARD OF MEDICAL QUALITY ASSURANCE
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA


MILLER MEDEARIS
Secretary-Treasurer

mh

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Beverly Hills, CA 90211)	L-24714
)	
License No. G-8384,)	
)	
Respondent...)	
)	

PROPOSED DECISION

This matter came on regularly for hearing before Rosalyn M. Chapman, Administrative Law Judge of the Office of Administrative Hearings, at Los Angeles, California, on January 19, 20, and 21, 1982. Calvin Torrance, Deputy Attorney General, represented the complainant. Respondent was present at all times throughout the hearing and represented by David L. Rosner, Attorney at Law. At the hearing complainant dismissed portions of the Petition to Revoke Probation as follows: At page 3, lines 22 through 26 were stricken in toto; at page 4, line 1, the phrase "and 9B" was stricken and the "s" at the end of the word "paragraphs" was deleted; and at page 4, line 4, the word "those" was stricken and in its stead the word "this" was inserted and the "s" at the end of the word "dates" was deleted. The record was held open following the hearing for the filing of certain documentary evidence by both parties. Pertinent code and regulation sections were filed by respondent on January 26, 1982 and marked Exhibit F for identification. A medical journal article was filed on the same date by respondent and marked Exhibit G for identification. Complainant, on January 27, 1982, filed a Quarterly Report form which was marked Exhibit 11 for identification. Oral and documentary evidence having been introduced and the matter submitted, the Administrative Law Judge finds as follows:

I

Robert G. Rowland made the Petition to Revoke Probation

in his official capacity as Executive Director of the Board of Medical Quality Assurance (hereafter BMQA) of the State of California.

II

On or about February 25, 1963, Robert Anthony Michals (hereafter respondent) was issued physician's and surgeon's certificate No. G-8384 by the predecessor of BMQA. Said license was, at all times, from that date until September 6, 1976, in full force and effect.

III

On September 6, 1976, the Division of Medical Quality (hereafter DMQ) of BMQA revoked respondent's license. Execution of the order of revocation was stayed and respondent was placed on probation for a period of ten (10) years upon certain terms and conditions, including the following:

"1. Respondent shall obey all laws of the United States, the State of California and its political subdivisions and the regulations of the Board of Medical Examiners or its successor.

* * *

5. Respondent shall continue to attend and participate on a regular basis, [sic] meetings of Alcoholics Anonymous, and shall refrain from consuming alcoholic beverages.

6. Respondent shall give an account of himself when visited by any representative of the Board or its successor and its investigative staff including the Probation Surveillance Officer. On such visits respondent shall be required to produce any appropriate sample necessary for drug detection or drug treatment analysis."

IV

Respondent's license was revoked based upon conclusions that respondent violated Business and Professions Code (hereafter BPC) Sections 490, 2360, 2361, 2383, 2384 and 2392. These conclusions stemmed from findings that respondent was convicted, in 1974, of violating Health and Safety Code (hereafter HSC) Section 11910 (possession of restricted dangerous drugs) and Vehicle Code (hereafter VC) Section 23103. Both convictions resulted from respondent's arrests for driving under the influence of alcohol, at which time respondent had in his possession certain amphetamines and dangerous drugs. The DMQ found that respondent was an alcoholic, but that the alcoholism "did not occur during office hours or while respondent was practicing medicine." In an attempt to prevent the effects of alcoholism from interfering with his medical practice, respondent "medicated himself with amphetamines and hypnotic drugs to control the delirium tremors and enhance his mental alacrity before

seeing patients; . . . respondent's self-use of said drugs was confined to combating the effects of alcohol from interfering with his medical judgment and treatment and they were not used illicitly in any other way." Moreover, DMQ found that respondent had been involved in "intensive psychiatric therapy, was hospitalized for treatment of his alcoholism. . . [, was] enrolled as a member of Alcoholics Anonymous . . . [and that he was] now able to deal positively with frustrations and personal problems that may occur without resorting to alcohol or drugs."

V

Sometime in late July of 1978 respondent consumed alcoholic beverages and was under the influence of intoxicating liquor in a public place in Oxnard, California. It was not established that respondent was unable to exercise care for his own safety and the safety of others. Respondent did not have any drugs in his possession. Respondent was arrested for violating Penal Code Section 647(f) by an officer of the Oxnard Police Department, and transported to police headquarters for a brief period. Criminal charges against respondent were subsequently dismissed without trial. Respondent disclosed this arrest to the BMQA on one of his quarterly reports. However, in a meeting with BMQA officials, sometime in May of 1979, respondent falsely denied that he had been under the influence of intoxicating liquor at the time of his arrest.

VI

On September 4, 1980, during an unannounced visit to respondent's office, respondent's Probation Surveillance Officer obtained a urine specimen from respondent. Said urine specimen was subsequently chemically analyzed, and disclosed a .02% calculated blood alcohol level. It was not established that respondent had consumed any alcoholic beverage on or about September 4, 1980; rather, the .02% calculated blood alcohol level was the result of respondent taking an across-the-counter cough syrup, which it is reported contains approximately ten percent alcohol. Respondent had been taking this particular cough syrup intermittently for several years, following pulmonary surgery.

VII

During the same visit, on September 4, 1980, respondent's Probation Surveillance Officer requested that respondent provide him with the name of his Alcoholics Anonymous sponsor and information regarding the locations and dates of attendance at Alcoholics Anonymous meetings. At that time respondent stated that he believed that such information was "confidential" and that he did not have to give it. Respondent's Probation Surveillance Officer did not make this request of respondent again until September of 1981. At that time it was made clear to respondent by BMQA personnel that he was to provide this information to his Probation Surveillance Officer.

On or about October 23, 1981, a letter was submitted to BMQA from respondent's Alcoholics Anonymous sponsor informing BMQA that respondent was regularly attending Alcoholics Anonymous meetings and had a record of sobriety. In fact, respondent had been going on a regular basis to Alcoholics Anonymous meetings since September of 1975. These regular meetings were at least weekly, and sometimes more often than that when respondent believed it was required for his continued sobriety.

VIII

Other than the July, 1978 incident in Oxnard, it was not established that respondent has consumed alcoholic beverages since September 6, 1976. Rather, the evidence indicates that respondent has been sober and is on the road to complete rehabilitation from alcoholism. Since September, 1980, respondent's Probation Surveillance Officer has made three or four unannounced visits to respondent's office and, on each occasion, respondent has been sober and given no indication that he has consumed alcoholic beverages.

IX

Respondent is a cosmetic surgeon, performing approximately thirty surgeries per week. At least ninety percent of these surgeries are performed in respondent's offices, rather than in a hospital setting. Respondent personally applies local anesthesia as part of his office surgeries. Condition No. 3 of respondent's probationary order, limiting his prescribing of Schedule II controlled substances, has seriously handicapped him in the performance of these surgeries. At the hearing the complainant indicated that it had no objection to the deletion from respondent's probationary order of Condition No. 3 prohibiting respondent from prescribing Schedule II controlled substances.

X

Respondent has recently undergone a brief separation from his second wife, and they are currently attempting a reconciliation. During the past year respondent has undergone psychotherapy on two or three occasions. It was not demonstrated that respondent is not dealing with his personal problems effectively, but it is advisable for respondent to increase the visitations to his psychotherapist.

* * * * *

Pursuant to the foregoing findings of fact, the Administrative Law Judge makes the following determination of issues:

I

Grounds exist to revoke respondent's probation pursuant to Condition No. 5 of his probationary order in that respondent

consumed alcoholic beverages as set forth in Finding V above.

II

Additional grounds exist to revoke respondent's probation pursuant to Conditions 5 and 6 of his probationary order in that respondent did not provide verification to his Probation Surveillance Officer of attendance at Alcoholics Anonymous meetings, as set forth in Finding VII above.

III

Grounds do not exist to revoke respondent's probation pursuant to Condition No. 1 of his probationary order in that it was not established that respondent violated Penal Code Section 647(f), as set forth in Finding V above.

IV

Grounds do not exist to revoke respondent's probation pursuant to Condition No. 5 of his probationary order in that it was not established that respondent consumed alcoholic beverages on or about September 4, 1980, as set forth in Finding VI above.

* * * * *

WHEREFORE, THE FOLLOWING ORDER is hereby made:

The September 6, 1976 order of the Division of Medical Quality, Board of Medical Quality Assurance, revoking respondent Robert Anthony Michals, M.D., physician's and surgeon's Certificate No. G-8384, and staying execution of said order of revocation is hereby modified, in that respondent's probationary period shall be extended for two (2) additional years, to run for a total of twelve (12) years from September 6, 1976, with the following, complete terms and conditions of probation:

1. Within sixty (60) days from the effective date of this decision, respondent shall submit to the Division, for its prior approval, a community service program in which respondent shall provide free medical services on a regular basis to a community or charitable facility or agency for at least twelve (12) hours per month for twenty-four (24) months following the effective date of approval by the Division of the community service program.

2. Respondent shall abstain completely from the use of alcoholic beverages. This prohibition does not apply to medication lawfully prescribed to respondent for a bona fide medical condition by another licensed practitioner; however, it does apply to medication sold without prescription by a practitioner.

3. Respondent shall submit to urine or blood testing, at respondent's cost, upon the request of the Division or its designee.

4. Within sixty (60) days from the effective date of this decision, respondent shall submit to the Division, for its prior approval, an alcohol rehabilitation program, in which respondent shall participate at least weekly for at least fifty weeks of the calendar year for the duration of the probation. In the quarterly reports to the Division, respondent shall provide documentary evidence of continuing participation in this program, as directed by the Division, listing dates of attendance, locations of meetings, and names of sponsors. This program may include respondent's ongoing participation in Alcoholics Anonymous; provided that respondent, upon request by the Division, shall submit third party documentary evidence to the Division of continuing participation in the Alcoholics Anonymous program.

5. Within sixty (60) days from the effective date of this decision, respondent shall submit to the Division, for its prior approval, the name and qualifications of the psychotherapist of respondent's choice. Upon approval, respondent shall undergo and continue therapy, on a basis no less than once every sixty (60) days, until the Division deems that no further psychotherapy is needed. Respondent shall have the treating psychotherapist submit quarterly status reports to the Division. The Division may require respondent to undergo psychiatric evaluation by a Division-appointed psychiatrist.

6. Respondent shall obey all federal, state and local laws, and all rules governing the practice of medicine in California.

7. Respondent shall submit quarterly declarations under penalty of perjury, on forms provided by the Division, stating whether there has been compliance with all the conditions of probation.

8. Respondent shall comply with the Division's Probation Surveillance program.

9. Respondent shall appear in person for interviews with the Division's medical consultant, upon request, at various intervals and with reasonable notice.

10. In the event respondent should leave California to reside in or practice outside the State, respondent must notify in writing the Division of the dates of departure and return. Periods of residency or practice outside California will not apply to the reduction of this probationary period.

Upon successful completion of probation, respondent's certificate will be fully restored. If respondent violates probation in any respect, the Division, after giving respondent notice and the opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. If an Accusation or Petition to Revoke Probation is filed against respondent during probation, the Division shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final.

I hereby submit the foregoing which constitutes my Proposed Decision in the above-entitled matter, as a result of the hearing had before me on the above dates, at Los Angeles, California, and recommend its adoption as the decision of the Division of Medical Quality, Board of Medical Quality Assurance.

DATED: February 9, 1982

Rosalyn M. Chapman
ROSALYN M. CHAPMAN
Administrative Law Judge
Office of Administrative Hearings

RMC: mh

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8 BEFORE THE
9 DIVISION OF MEDICAL QUALITY
10 BOARD OF MEDICAL QUALITY ASSURANCE
11 DEPARTMENT OF CONSUMER AFFAIRS
12 STATE OF CALIFORNIA

13 In the Matter of the Petition to
14 Revoke Probation of:

15 ROBERT ANTHONY MICHALS, M.D.
16 121 North San Vicente Blvd.
17 Beverly Hills, CA 90211

18 License No. G-8384,

19 Respondent.

NO. D-2769

PETITION TO
REVOKE
PROBATION

20 COMES NOW complainant, Robert G. Rowland, who alleges
21 as follows:

22 1. He is the Executive Director of the Board of Medical
23 Quality Assurance (hereinafter referred to as the "board"), and
24 makes and files this petition to revoke probation solely in his
25 official capacity.

26 2. On or about February 25, 1963, Robert Anthony
27 Michals (hereinafter referred to as "respondent") was issued
28 license number G-8384 by the Board of Medical Examiners,
predecessor in interest to the board. Said license was at all
times from that date until September 6, 1976, in full force and
effect.

1 3. On or about September 6, 1976, the Division of
2 Medical Quality of the board revoked respondent's license.
3 Execution of said order of revocation was stayed and respondent
4 was placed upon probation for a period of ten (10) years upon
5 certain terms and conditions.

6 FIRST CAUSE OF ACTION

7 1978 Incident in Oxnard

8 4. Condition 1 of said probation has provided at all
9 times since issuance as follows: "1. Respondent shall obey all
10 laws of the . . . State of California . . ."

11 5. Condition 5 of said probation has provided at all
12 times since issuance as follows: "Respondent . . . shall refrain
13 from consuming alcoholic beverages."

14 6. Respondent's probation is subject to revocation in
15 that he has violated probation conditions 1 and 5, as more
16 particularly set forth below:

17 A. On or about July 29, 1978, in a public place in
18 the city of Oxnard, California, respondent was under the
19 influence of intoxicating liquor in such a condition that
20 he was unable to exercise care for his own safety or the
21 safety of others.

22 B. The facts set forth in subparagraph 6A constitute
23 a violation of the provisions of section 647(f) of the
24 Penal Code, a law of the State of California, in violation
25 of condition 1 of respondent's probation.

26 C. The facts set forth in subparagraph 6A constitute
27 a violation of the provisions of condition 5 of respondent's

1 probation, since respondent consumed alcoholic beverages
2 on that date.

3 SECOND CAUSE OF ACTION

4 1980 Incidents in Los Angeles County

5 7. Condition 5 of said probation has provided at all
6 times since issuance as follows: "Respondent shall continue to
7 attend and participate on a regular basis, meetings of Alcoholics
8 Anonymous, and shall refrain from consuming alcoholic beverages."

9 8. Condition 6 of said probation has provided at all
10 times since issuance in part as follows: "Respondent shall give
11 an account of himself when visited by any representative of the
12 board or its successor and its investigative staff including the
13 Probation Surveillance Officer."

14 9. Respondent's probation is subject to revocation in
15 that he has violated probation conditions 5 and 6, as more
16 particularly set forth below:

17 A. On or about September 4, 1980, a urine specimen
18 was taken from respondent at his office in Beverly Hills,
19 California by the Probation Surveillance Officer. A chemical
20 test of said urine specimen revealed that respondent had
21 ingested alcohol on or about September 4, 1980.

22 B. On or about November 26, 1980, a sample of
23 respondent's blood was taken at the board offices in
24 Westchester, California by a Board Medical Consultant.
25 A chemical test of said blood revealed that respondent
26 had ingested alcohol on or about November 26, 1980.

27 /

1 C. The facts set forth in paragraphs 9A and 9B
2 constitute a violation of the provisions of condition 5
3 of respondent's probation, since respondent consumed
4 alcoholic beverages on those dates.

5 D. On or about September 4, 1980, the Probation
6 Surveillance Officer asked respondent about his Alcoholics
7 Anonymous sponsor. Respondent replied, "That is personal,"
8 and then subsequently indicated that he attended Alcoholics
9 Anonymous meetings in the Santa Monica area. From that date
10 to the date of filing this petition to revoke probation,
11 respondent has failed to provide a statement from his
12 Alcoholics Anonymous sponsor that verified his attendance
13 at meetings of that group.

14 E. The facts set forth in paragraph 9D constitute
15 a violation of the provisions of conditions 5 and 6 of
16 respondent's probation, since respondent has failed to
17 give an account of himself concerning his attendance at
18 Alcoholics Anonymous meetings when visited by the board's
19 Probation Surveillance Officer.

20 WHEREFORE, complainant prays that:

21 1. Respondent's probation be revoked, the stay vacated,
22 and the penalty of revocation of respondent's license be
23 reimposed; or

24 /

25 /

26 /

1 2. The Division of Medical Quality take such other
2 action as it deems just and proper.

3 Dated: June 23, 1981.

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8 ROBERT G. ROWLAND
9 Executive Director
Board of Medical Quality Assurance
State of California

10 Complainant
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